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SENATE BILL 657

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE INDEPENDENT CONTRACTOR STATUS ACT; ESTABLISHING A PRESUMPTION OF EMPLOYER AND EMPLOYEE RELATIONSHIP; SETTING STANDARDS TO INDICATE WHEN A WORKER IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE; IMPOSING CRIMINAL PENALTIES AND LICENSE SANCTIONS FOR IMPROPERLY REPORTING AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE. --Sections 1 through 5 of this act may be cited as the "Independent Contractor Status Act". "

Section 2. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS. --As used in the Independent . 153550. 1

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1 Contractor Status Act:

2 A. "license" includes the whole or a part of any  
3 state agency-issued license, permit, certificate, approval,  
4 registration, charter, membership, statutory exemption or other  
5 form of permission required by law; and

6 B. "state agency" means a department, commission,  
7 board, government corporation or educational institution of  
8 this state. "

9 Section 3. A new section of Chapter 50, Article 4 NMSA  
10 1978 is enacted to read:

11 "[NEW MATERIAL] EMPLOYER AND EMPLOYEE RELATIONSHIP--  
12 INDEPENDENT CONTRACTOR.--For purposes of the employer and  
13 employee relationship in this state, except as otherwise  
14 provided by law, a person providing labor or services for  
15 compensation shall be considered to be and have the status of  
16 an employee and shall not be considered to be or have the  
17 status of an independent contractor unless the following  
18 standards indicative of an independent contractor are met:

19 A. the person providing labor or services is free  
20 from direction and control over the means and manner of  
21 providing the labor or services, subject only to the right of  
22 the person for whom the labor or services are provided to  
23 specify the desired results;

24 B. the person providing labor or services obtains  
25 business registrations or licenses required by state law or

1 local ordinance for the person to provide the labor or  
2 services;

3 C. the person providing labor or services furnishes  
4 the tools or equipment necessary to provide the labor or  
5 services;

6 D. the person providing labor or services has the  
7 authority to hire and fire employees to perform the labor or  
8 services;

9 E. payment for labor or services is made upon  
10 completion of the performance of specific portions of a project  
11 or is made on the basis of a periodic retainer; and

12 F. the person providing labor or services  
13 represents to the public that the labor or services are to be  
14 provided by an independently established business. A person is  
15 engaged in an independently established business when four or  
16 more of the following circumstances exist:

17 (1) the labor or services are performed  
18 primarily at a location separate from the person's residence or  
19 in a specific portion of the residence that is set aside for  
20 performing labor or services;

21 (2) commercial advertising or business cards  
22 are purchased by the person, or the person is a member of a  
23 trade or professional association;

24 (3) telephone or email listings used for the  
25 labor or services are different from the person's personal

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1 listings;

2 (4) the labor or services are performed only  
3 pursuant to a written contract;

4 (5) the labor or services are performed for  
5 two or more persons within a period of one year; or

6 (6) the person assumes financial  
7 responsibility for errors and omissions in labor or services as  
8 evidenced by insurance, performance bonds and warranties  
9 relating to the labor or services being provided. "

10 Section 4. A new section of Chapter 50, Article 4 NMSA  
11 1978 is enacted to read:

12 "[NEW MATERIAL] INDEPENDENT CONTRACTOR--IMPROPER  
13 REPORTING--PENALTY.--An employer who intentionally reports to a  
14 state agency that an employee is an independent contractor when  
15 the employee's status does not meet the standards indicative of  
16 an independent contractor as identified in Section 3 of the  
17 Independent Contractor Status Act is guilty of a misdemeanor  
18 and shall be punished by a fine of not more than five thousand  
19 dollars (\$5,000) or by imprisonment for a definite term not to  
20 exceed six months or both. "

21 Section 5. A new section of Chapter 50, Article 4 NMSA  
22 1978 is enacted to read:

23 "[NEW MATERIAL] INDEPENDENT CONTRACTOR--IMPROPER  
24 REPORTING--LICENSE SANCTIONS.--Conviction of an employer for  
25 violating Section 4 of the Independent Contractor Status Act

. 153550. 1

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1 shall be grounds for a state agency to take action to suspend,  
2 revoke or refuse to renew a license issued to that employer.  
3 An action to suspend, revoke or refuse to renew the employer's  
4 license shall be brought by the state agency issuing the  
5 license pursuant to that agency's process and procedure,  
6 including right of appeal, for those actions as provided by law  
7 or rule. "